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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,484	01/25/2002	Jackie R. See	47783/KMO/O194	4984

23363 7590 02/24/2003

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EXAMINER
KISHORE, GOLLAMUDI S

ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 02/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
10/057,484	See
Examiner	**Art Unit**
Gollamudi Kishore	1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *three* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Nov 19, 2002* .

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above, claim(s) *22-34* is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-21* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

1. Applicant's election without traverse of Group I, claims 1-21 in Paper No. 6 is acknowledged.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 15-34 of US 6,015,576. Although the conflicting claims are not identical, they are not patentably distinct from each other because instant generic claims include the specific volumes of the three different sizes of liposomes in the claims of said patent.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 14-31 of US 6,117,449. Although the conflicting claims are not identical, they are not patentably distinct from each other because instant generic 'antigens' includes the hepatitis C antigens in the claims of said patent.

5. Claims 1-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-51 of U.S. Patent No. 6,207,185. Although the conflicting claims are not identical, they are not patentably distinct from each other because instant generic 'antigen' and 'size' include the specific antigens and specific sizes in terms of volumes, respectively recited in the claims of said patent.

Claim Rejections - 35 U.S.C. § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

> **(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

7. Claims 1-2, 4-7, 15-18 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Diminsky (New Generation of Vaccines, 1993).

Diminsky teaches lyophilized liposomes containing hepatitis antigen for use as a vaccine (note the abstract and Materials and Methods). Instant claims do not recite any percentages of specific populations of liposomes based on size. Therefore, the burden is upon applicant to show that the lyophilized liposomes are different from instant lyophilized liposomes.

Claim Rejections - 35 U.S.C. § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> **(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.**

9. Claims 1-2, 4-7 and 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato (5,573,779) or Aramaki (Pharmaceutical Research, 1993) in view of Diminski cited above by itself or in further in view of Gregoriadis (Liposomes as drug carriers, 1988).

Sato teaches oral liposomal vaccine formulations which reach Peyer's patches (note the abstract, columns 1-4, examples and claims). Sato however does not teach. Sato however, does not teach instant antigens. Sato also does not teach the lyophilization of the liposomes.

Similarly, Aramaki teaches the oral administration of antigens encapsulated in liposomes to be taken up by Peyer's patches (note the abstract, Materials and Methods, and discussion). Aramaki however, does not teach instant antigens. Aramaki also does not teach the lyophilization of the liposomes.

What is lacking in Sato, and Aramaki are the teachings of lyophilization of the liposomes and the use of specific claimed antigens.

Diminski as pointed above, teaches the use of liposomes containing hepatitis antigen in lyophilized form for use as a vaccine.

Gregoriadis while discussing the immunoadjuvant action of liposomes teaches that it is sometimes preferable that liposomes containing antigens be freeze-dried (note the entire article; in particular pages 282 and 286).

It would have been obvious to one of ordinary skill in the art to lyophilize the liposomes since both Diminski, and Gregoriadis teach that lyophilizationn is routinely practiced in the art and that it is sometimes preferable. In the absence of showing unexpected results, it is deemed obvious to an artisan to use any antigen including claimed

antigens in Sato's or Aramaki's teachings with the expectation of obtaining similar antibody response.

10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sato (5,573,779) or Aramaki (Pharmaceutical Research, 1993) in view of Diminski cited above by itself or in further in view of Gregoriadis (Liposomes as drug carriers, 1988), further in view of Geary (5,382,435).

The teachings of Sato, Aramaki, Diminski and Gregoriadis have been discussed above. What is lacking in these references is the teaching of enteric coating over the lyophilized preparations.

Geary teaches that Peyer's glands exist in the jejunum particularly in the lower portion thereof and in order to deliver acid and alkali labile agents to Peyer's patches the compositions have to be enterically coated. Geary's formulations include enteric coated liposome formulations for the delivery of pharmaceuticals including oral vaccines selectively to Peyer's patches. The composition is administered orally in the form of a capsule (note the abstract, col. 1, lines 35-39; col. 2, lines 36-68 and claim 6).

To use enterically coated capsules in the teachings of Sato, Aramaki. Diminsky and Gregoriadis would have been obvious to one of ordinary skill in the art since such enteric coating would enable the antigens in the compositions to reach Peyer's patches selectively.

11. Claims 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato (5,573,779) or Aramaki (Pharmaceutical Research, 1993) in view of Diminski cited

above by itself or in further in view of Gregoriadis (Liposomes as drug carriers, 1988), further in view of Fullerton (4,235,877).

The teachings of Sato, Aramaki, Diminski and Gregoriadis have been discussed above. What is lacking in these references is the teaching of the claimed specific antigens.

Fullerton while disclosing liposomal formulations containing bacterial and viral antigens teaches that liposomally encapsulated antigens are more active than free antigens. The antigens taught by Fullerton include hepatitis and influenza viruses (note the abstract, col. 2, line 21 et seq., and Examples).

The use of the antigens taught by Fullerton in the teachings of Sato, Aramaki, Diminski and Gregoriadis would have been obvious to one of ordinary skill in the art since Fullerton teaches that these antigens are more active in liposomes than free antigens.12.

Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sato (5,573,779) or Aramaki (Pharmaceutical Research, 1993) in view of Diminski cited above by itself or in further in view of Gregoriadis (Liposomes as drug carriers, 1988), further in view of Barchfield (5,709,879).

The teachings of Sato, Aramaki, Diminski and Gregoriadis have been discussed above. What is lacking in these references is the teaching of HIV antigens.

Barchfield discloses high levels of immune response to liposomally encapsulated HIV antigens, gp120 and RT6(note the abstract and col. 7, lines 24-33).

The use of HIV antigens taught by Bachfield in the teachings of Sato, Aramaki, Diminski and Gregoriadis would have been obvious to one of ordinary skill in the art since Barchfield teaches higher levels of immune response by such an encapsulation.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *G.S. Kishore* whose telephone number is (703) 308-2440.

The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, T.K. Page, can be reached on (703)308-2927. The fax phone number for this Group is (703)305-3592.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [thurman.page@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility

that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1235.

Gollamudi S. Kishore, Ph. D

Primary Examiner

Group 1600

gsk

February 13, 2003